

T.S-71/06

04.05.2013:-

The parties are present through their respective learned counsels. Today is fixed for passing order on petition No 2206/13.

This order arises out of petition filed for the plaintiff with a prayer to recall writ from circle office, East Circle, Jorhat and issue a fresh writ. Petitioner's case in brief is that plaintiff has preferred an appeal against the judgment & decree dated 8-12-11 passed in the instant case which was registered as T.A no 4/12 . It is stated that the learned Civil Judge, Jorhat pleased to allow the said appeal and set-aside the impugned judgment and the decree dated 08-12-11 and remand the case record to this Court for disposal of the same afresh by ascertaining the encroachment of land of either parties through issuance of independence Survey Commission to make local inspection of the land of both parties and find out the actual possession of their respective land. It is further stated that this court issued a commission through Circle Office , East circle, Jorhat whereas Ld appellate court had directed for issuing an independent commission. And as such prayer has been made to recall the writ issued to circle officer and further to appoint independent firms namely (1)Sankaranam Land Survey at Malow Ali, Jorhat or (2) Blazom Group, Dahabora Chuk, Jorhat.

O.P objected the petition and submitted that circle office is the best person to ascertain the encroachment of land in question . And as such prayed for dismissal of the petition.

Perused the available materials on record. Perusal of judgment passed in T.A 4/12 reveals that direction has been passed by appellate court to decide matter afresh by ascertaining the encroachment of land of either parties through issuance of independent survey commission to make local inspection of the land of both the parties and to find out the actual position of their respective land.

Now as per order 26 rule 9 in any suit, in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute or ascertaining the market value of any property or the mesne profit or damages or annual net profits the court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the court.

In the instant case considering the nature of dispute between the parties Ld predecessor of this court issued the commission to the SDC, Jorhat to investigate and to submit report by specifically mentioning the question which is to be investigated & answered by the commission.

Perusal of Record further reveals that writ was issued and Circle officer in pursuance of the writ appeared in the disputed land after complying due procedure but plaintiff obstructed him showing a copy of petition filed by the him in this court, on an off date that too after the issuance of writ.

Such conduct of the plaintiff is violative of the order of a court of law and also against judicial decorum. By such conduct plaintiff has not only diminished the dignity of a court but also have caused loss of public money and time.

This court is not bound to appoint the survey commissioner as per whims and franchise of the party rather in view of the provision itself, court has the discretion to appoint a fit person to be a commissioner.

The term independent commissioner does not necessarily mean that commissioner ought to be a independent firm, i.e a private organization. Independent means an impartial person or authority. Circle Officer, being a public person and a competent person in the land revenue system is certainly an independent person/authority . Therefore I do not think it fit & proper to interfere the order passed by my Ld predecessor whereby he issued to commission to the SDC, Jorhat, East Circle.

Petition thus being devoid of merit , stands rejected with cost.

The plaintiff is directed to pay cost of Rs 2000/- for unnecessarily making loss of public money, utilized in the Government machinery, and that too against the order of this court. The aforesaid cost be deposited in the District Legal services Authority , Jorhat.

Issue fresh writ to the Circle Officer, Jorhat East Circle.

Plaintiff shall take steps.

Fix- 07.05.13 for steps of writ and payment of cost.

Mrs Achma Rahman,
Munsiff No 1, Jorhat.